HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT APPEAL NO.2205 OF 2005

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Between:

S.Nirmal S/o S.S.Sundaram R/o H.NO.1209/4,
Railway Quarters, New Bhoiguda, Secunderabad.

…Appellant

A n d

The Director, Sainik Welfare, Government of A.P rep.
by its Committee of officers for verification of CAP certificate,
A.P., Hyderabad and others

…Respondents

:: **O R D E R** ::

Counsel for Appellant : Sri K.Ram Reddy

Counsel for respondents No.1&2 : Government Pleader for
Medical & Health

Counsel for respondent No.4 : Sri D.V.Nagarjuna Babu

Counsel for respondent No.5 : Sri K.Rathangapani Reddy

Counsel for respondent No.6 : Sri S.Niranjan Reddy

10th Ocotber, 2006

Per G.V.Seethapathy, J

This appeal is directed against order dated 7.10.2005 passed by the learned Single Judge in W.P.No.19150 of 2005, whereby he rejected the appellant's prayer for issue of a mandamus to the respondents to consider his candidature for admission to first year MBBS/BDS course during the academic year 2005-2006 under the category of `Children of Armed Personnel' (for short, `CAP').

The appellant appeared in the Common Entrance Test-2005 Engineering held for admission to M.B.B.S and Engineering courses. His name was placed at No.2193 in the merit list prepared for admission to M.B.B.S course. He claimed admission against 1% seats earmarked for CAP category by claiming that his father Sri S.S.Sundaram is an ex-serviceman and after discharge from Indian Army on medical grounds in 1994, he got employment as Diesel Assistant in South Central Railway, Secunderabad. The appellant further claimed that he had prosecuted his studies up to Intermediate in the twin cities of Hyderabad and Secunderabad and, as per rules, he is entitled for admission against the seats reserved for CAP' category. However, in the counseling held on 27.9.2005, his candidature was not considered for admission against the seats reserved for CAP category on the premise that as per the extant rules his father cannot be treated as an ex-serviceman. The appellant challenged the aforementioned decision of the committee constituted by N.T.R.

University of Health Sciences for conducting counseling on the ground that the same is arbitrary and violative of his fundamental right to equality guaranteed under Article 14 of the Constitution. He pleaded that even though his father hails from Tamil Nadu, by virtue of employment he settled in Andhra Pradesh for more than twenty years. He further pleaded that less meritorious candidates have been admitted under CAP category and he has been discriminated without any rhyme or reason.

The first respondent-Director, Sainik Welfare filed a counter affidavit stating therein that the committee of three officers appointed for verification of certificates found that as per the Military Discharge Certificate Sri S.S.Sundaram, father of the appellant was domicile of Tamilnadu and he got registered his name in the office of the Assistant Director, Ex-servicemen Welfare, Tanjavur, Tamilnadu for re-employment purpose in 1984 and for census purpose in 1999. The committee further found that as per the CAP certificate, the appellant's father had shown himself as resident of Tanjavur and had been obtaining concessions and benefits for his children in Tamil Nadu State. In the counter affidavit, it was averred that as per the procedure prescribed by the Director General Resettlement, New Delhi, every ex-serviceman must register with the Zilla Sainik Board serving their area of residence and Sri S.S.Sundaram got himself registered with Zilla Sainik Board, Tanjavur, which is his permanent place of residence. He has to avail all the benefits and concessions provided by the State of Tamil Nadu only and not eligible for any such benefits in the State of Andhra Pradesh. As per the procedure laid down in Government of India, Ministry of Defence letter dated 7.7.1988, if an ex-serviceman discharged/retired wants to settle down permanently in other

State/District, he has to approach the concerned Record Officer along with declaration duly verified by the original Zilla Sainik Board as also new Zilla Sainik Board and on receipt of the same, the Record Officer will effect change of address in the discharge certificate. Sri S.S.Sundaram, father of the appellant has not followed the procedure for effecting change of address as per the circular issued by the Director, Sainik Welfare vide Memo dated 31.7.1989. Mere staying for long time in other districts is no criteria for treating them as natives of that district. Sri S.S.Sundaram has not registered his name in any Sainik Board of Andhra Pradesh and he continued his registration with Sainik Welfare Board Tanjavur. Hence the application of the appellant for admission under the category of CAP is rightly rejected by the committee.

The learned Single Judge dismissed the writ petition holding that as per the rules and circular instructions in vogue, it is only the persons who are registered with the respective State or District Sainik Boards that are entitled to the benefits provided within that region and the question of extension of benefit of reservation in favour of CAP category to the children of ex-servicemen registered at a place outside the State, does not arise.

Feeling aggrieved by the order of the learned Single Judge, the appellant preferred this appeal. During the pendency of the appeal, the appellant filed W.A.M.P.No.1787 of 2006 seeking leave to amend the grounds of appeal and the prayer in the appeal so as to be considered for admission to the medicine stream under the 1% quota earmarked for CAP for the year 2006 as the petitioner secured general rank of 2892 corresponding to CAP rank of 33. The application filed by the appellant was allowed on 1.9.2006 and leave was granted to

him to amend the frame of the appeal.

Sri K.Ram Reddy, learned counsel for the appellant contended that the father of the appellant, after his discharge from Military Service in 1984 has settled down at Secunderabad in 1985 and ever since he is in the employment of South Central Railway and the petitioner pursued his entire education at school and college level in the twin cities only and denial of the benefit of reservation to the appellant-petitioner under CAP category on technical grounds in spite of the petitioner securing competent rank is arbitrary and illegal. He further submitted that the orders and circulars pertaining to the registration of the armed personnel/Ex-servicemen with Zilla Sainik Boards are meant for the purpose of further employment and other benefits that may be availed by the ex-servicemen and they do not bar the children seeking admission into professional courses in other states when the conditions laid down for such admissions are duly fulfilled.

Sri D.V.Nagarjuna Babu, learned Standing Counsel for N.T.R. Health University-4th respondent, on the other hand, contended that as per Andhra Pradesh Professional Educational Institutions (Regulation of admission into under graduate professional courses through common entrance test) Rules, 1993 issued vide G.O.Ms.No.184 Education dated 20.8.1993 as amended by G.O.Ms.No.370 dated 18.10.1994, the percentage of reservation for medical and dental courses is 1% for the children of ex-servicemen subject to the condition that the said ex-servicemen are residing for a minimum period of five years in Andhra Pradesh and besides the residence certificate issued by the Mandal Revenue Officer, such candidates shall submit a certificate from Zilla Sainik Welfare Officer of the Zilla Sainik Welfare Board as to the eligibility to be considered under the

Ex-servicemen reservation quota and in the present case, the three officers committee constituted by the Director of Sainik Welfare found the petitioner ineligible for admission to CAP category as his father was registered with Zilla Sainik Board of Tanjavur, after his discharge and change of registration to Hyderabad Zilla Sainik Board by following the prescribed procedure was not effected. He, therefore contended that the appellant is eligible for benefits and concessions available in Tamilnadu only, but not in the State of Andhra Pradesh and so his candidature under CAP category was rightly rejected.

We have given thoughtful consideration to the contentions of the learned counsel for both parties and perused the records.

In exercise of power vested in it under Section 3 read with Section 15 of the Andhra Pradesh Educational Institutions (Regulation of admission and Prohibition of Capitation Fee Act, 1983 (Act 5 of 1983), the Government of Andhra Pradesh framed rules for admission into M.B.B.S course called the Andhra Pradesh Professional Educational Institutions (Regulation of admission into under graduate professional courses through common entrance test) Rules, 1993 (for short, `the Rules'). These rules contain the procedure for admission into first year of the professional courses through a common entrance test (EAMCET). The rules also provide for reservation of seats to various categories including children of ex-servicemen and defence personnel. Rule 8, sub-rule (4)(b)(4) prescribes the percentage of reservation for medical and dental courses as 1% for the children of ex-servicemen/defence personnel including children of Border Security Force and Central Reserve Police residing in Andhra Pradesh. The said rule was amended by G.O.Ms.No.370 Education, dated 18.10.1994, which is extracted below:

“AMENDMENT

In sub-rule (4) of rule 8 if the said rules:-

(1) for item (4) clause (a) the following shall be substituted namely:-

(4) 2% for the children of Ex.Serviceman and defence Personnel including the Children of Border Security Force and central Reserve Police personnel subject to the condition that the said Ex.Servicemen etc, are residing for a minimum period of five years in Andhra Pradesh.

(2) For item (4) in Clause (b), the following shall be substituted, namely:-

(4) 1% for the children of Ex.Serviceman and the servicing service personnel of these wings of the defence services viz., Army, Navy and Air Force subject to the condition that the said Ex.Servicemen etc. are residing for a minimum period of five years in Andhra Pradesh.

(3) after clause (b) the following Note shall be inserted, namely:-

Note: for the purpose of claiming reservation under the quota of children of Armed Personnel etc. under clause (a) and clause (b) above the candidates should comply the following requirements.

(1) the children of Ex.Servicemen and Servicemen residing in the State of Andhra Pradesh seeking admission shall in support of their claim

submit a residence certificate signed by the Mandal Revenue officer from where the candidates claims the residence of his parent

(2) The candidates should submit a certificate from Zilla Sainik Welfare Officer of the Zilla Welfare Board as to their eligibility to be considered under servicemen/ex.Servicemen (Army) reservation quota, specifying the category to which the applicant belongs with attested copies of the documentary evidence for claim.

(3) Applications of the Candidates submitted for reservation under the servicemen/Ex.Servicemen quota

shall be scrutinized by the A.P.Sainik Board or its nominee and its decision is final and binding on the candidates".

It can be seen from the above extracted amended provision that while retaining the percentage of reservation for the children of ex-servicemen etc. at 1%, a condition was stipulated that the said ex-servicemen shall be residing for a minimum period of five years in Andhra Pradesh. Further, a note was also appended to the above amended sub rule that for the purpose of claiming reservation, the candidates should comply with two requirements that they shall submit a residence certificate signed by the Mandal Revenue Officer in support of their claim of residence in the state of Andhra Pradesh and also a certificate from Zilla Sainik Welfare Officer of the Zilla Welfare Board as to their eligibility to be considered under servicemen/ex-servicemen reservation category specifying the category to which the applicant belongs. It is further stipulated in the amended rule that the applications of the candidates submitted for reservation under ex-servicemen quota shall be scrutinized by the Andhra Pradesh Sainik Board or its nominee and its decision is final and binding on the candidates.

It is not disputed that the appellant produced a certificate from the concerned Mandal Revenue Officer in proof of the residence in the State of Andhra Pradesh as required under clause (1) of the note appended to the amended sub rule (4). The dispute is in relation to compliance with the second requirement of the eligibility of the appellant to claim reservation under CAP quota. In the prospectus issued by the 4th respondent-N.T.R.Health University, it is stated under Clause 7.4.2 that the children of ex-servicemen were directed to bring

among other things the original `Children of Armed Forces Personnel Certificate' issued by Zilla Sainik Welfare Officer, at the time of counseling. It is also mentioned under clause 7.5 that the claims against this quota are to be verified and certified by the Director of Sainik Welfare, Government of Andhra Pradesh.

It is an admitted position that Sri S.S.Sundaram, father of the appellant, after his discharge from Military Service got his name registered with the office of Assistant Director, Ex-servicemen Welfare, Tanjavur and it is borne out by the Military Discharge Certificate issued by the Record Officer of the Madras Regiment that he is a domicile of Tanjavur District, Tamilnadu State. The CAP certificate submitted by the appellant is also issued by the Assistant Director, Ex-servicemen Welfare, Tamilnadu, which also states that the ex.Servicemen is resident of Tanjavur. It is also not disputed that the endorsement dated 2.6.2004 of the Assistant Director, Ex.Servicemen Welfare, Tanjavur District made on Military Discharge Certificate of the appellant's father shows that the appellant's father was availing concessions and benefits in Tamilnadu State. Basing on the above record, the committee of officers appointed by the Director, Sainik Welfare for the purpose of verification of the certificates rejected the claim of the appellant on the ground that his father is a domicile of Tanjavur District and is registered with Ex-Servicemen Welfare Directorate, Tanjavur. The Government of India, Ministry of Defence has prescribed a procedure in their No.A/00651/Org.8(1&R) (a), dated 7.7.1988 for effecting change of address in Discharge certificate from one State/District to another. As per the prescribed procedure, ex-servicemen intending to settle down in a State or District other than the one mentioned in the Discharge Certificate has to approach the

concerned Record Officer along with a declaration duly verified by the Zilla Sainik Board of the previous district as also Zilla Sainik Board of the District to which he seeks transfer and on scrutiny of the said declaration, the Record Officer will effect change of address in the Discharge Certificate.

Since the appellant's father did not get his domicile status transferred from Tamil Nadu to Andhra Pradesh by following the prescribed procedure, the Discharge Certificate continues to show that he is permanent resident of Tanjavur in Tamilnadu. The fact that he has been residing in the State of Andhra Pradesh by virtue of his employment is of no consequence. The appellant's father is holding a transferable post. Mere stay at a particular place for whatever period because of exigencies of the job, does not in any manner affect the domicile status mentioned in the Discharge Certificate issued at the time of discharge from Military Service. If the appellant's father wanted to seek a change of domicile from Tamilnadu to Andhra Pradesh for whatever reason, he ought to have taken necessary steps in accordance with the procedure prescribed. However, the fact of the matter is that the appellant's father did not exercise the option of availing facility of change of domicile from Tamil Nadu to Andhra Pradesh and allowed his registration to continue with the Directorate of ex-servicemen welfare, Tanjavur, and availed the concessions and benefits from the State of Tamil Nadu all these years. Therefore, it is not open for the appellant to contend that because of the residence of himself and his father in the State of Andhra Pradesh for so many years, his candidature against CAP quota ought to be considered.

Learned counsel for the appellant contended that the executive instructions contained in the circulars and letters issued by the

Government of India, Ministry of Defence should not be allowed to come in the way of the appellant claiming admission against CAP quota for no fault of his, but we have not felt impressed. Apart from the executive orders referred to supra, the statutory rule as amended by G.O.Ms.No.370, dated 18.10.1994 extracted supra mandates that the children of ex-servicemen seeking admission against CAP quota shall submit a certificate from Zilla Sainik Welfare Officer of the Zilla Welfare Board as to their eligibility to be considered under ex-servicemen quota and such certificate shall be scrutinized by the Andhra Pradesh Sainik Board or its nominee, whose decision is final and binding. In the present case, the certificate produced by the appellant was verified by the committee of three officers and they found that the appellant is not eligible because his father is shown as domicile of Tanjavur District in the Discharge Certificate and he was registered with ex-servicemen Welfare Directorate of Tanjavur. So long as the change of address is not effected in the Discharge Certificate in accordance with the procedure prescribed, the appellant's father's registration with the Directorate of Ex.Servicemen Welfare, Tanjavur continues to be operative and hence, he cannot seek concession or benefits for his children from another State. It is nowhere prescribed that the ex-servicemen registered in one State or District can avail the benefits or concessions for himself or his children anywhere in the country. The very fact that an elaborate procedure is prescribed for effecting change of address by the Army Headquarters, New Delhi requiring due amendment of Discharge Certificate and for authentication of the same is indicative of the fact that registration with a particular Zilla Sainik Board has some significance and purpose. The Government of India, Ministry of Defence by their circular instructions dated 21.1.1992 to all the Directors and the Secretaries of

Sainik Boards impressed that the basic purpose of issue of identity card has been to confer the status of ex-servicemen to the holder of the card and to facilitate his identity which entitles him to various benefits and concessions. It is further clarified in those instructions that issue of identity card by particular Zilla Sainik Board does not mean that the card holder belongs to that State or Zilla Sainik Board for the purpose of availing any benefit or concession. For availing various benefits/concessions offered by a State, an ex-servicemen has to be domicile of that State. With a view to avoid any inconvenience to those ex-servicemen, who may be away from their State of domicile on account of re-employment etc, the ex-servicemen were permitted to have their identity cards issued by the State Sainik Boards or Zilla Sainik Boards in whose jurisdiction they may be residing at the time of issue of identify card. From the above circular, it is clear that mere issue of identity card by a State or Zilla Sainik Board does not effect change of domicile. In order to avoid inconvenience to those ex-servicemen who are away from their state of domicile, issue of identity cards by the State or Zilla Sainik Board where they happen to be residing or working at that time is permitted. Even if the appellant's father was issued an identity card by the State or Zilla Sainik Board in Andhra Pradesh where he is residing on account of re-employment, it is of no avail inasmuch as there has been no change of domicile duly effected in accordance with the procedure prescribed and it does not mean that he belongs to the State for the purpose of availing any benefit/concession. The above circular makes it clear that for availing various benefits and concessions offered by the State, the ex-servicemen has to be domicile of that State. As the appellant's father is not domiciled in the State of Andhra Pradesh, he is not entitled to avail the various benefits and concessions offered by the State of

Andhra Pradesh for himself or his children. As otherwise, there is absolutely no reason to prescribe a procedure for effecting the change of registration or permanent address from one District to another. The appellant, has, therefore failed to establish his eligibility to be considered against the CAP quota in the State of Andhra Pradesh as his father hails from and is domiciled in the State of Tamil Nadu. The appellant's claim was rightly rejected by the committee of officers appointed to scrutinize the applications claiming reservation under CAP category. The appellant's claim for consideration of his candidature is thus not in compliance with the mandatory requirement of the amended sub-rule (4) of Rule 8 of the Rules and hence his claim for consideration under CAP category is untenable. It is however, open for the appellant to stake his claim under general category as he is admittedly a local candidate by virtue of his study at Hyderabad and Secunderabad in the context of the Presidential Order of local area reservation.

In the result, the appeal is dismissed.

G.V.SEETHAPATHY, J

G.S.SINGHVI, CJ

10th October 2006

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HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT APPEAL NO.2205 OF 2005

(Judgment of the Bench prepared by
Hon'ble Sri Justice G.V.Seethapathy)

DATED: .10.2006

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